

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on November 19, 2009 as **ARC 7368B**. The Notice of Intended Action was later amended as **ARC 8038B** on August 12, 2009. The Administrative Rules Review Committee requested a formal regulatory analysis on September 9, 2009, specific to **ARC 8038B**, to estimate the impact OIW protections would have on the growth and economies of neighboring rural communities. Thirteen public hearings were held overall with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from approximately 930 persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

The adopted amendments have been modified from those published in the Notices. Prior to presenting the amendments to the Environmental Protection Commission for approval, the Department made specific changes to the "Iowa Antidegradation Implementation Procedure" document. The modifications were made after all comments from the public comment process were considered.

Several non-substantive corrections, such as formatting, sentence restructuring, deletion of redundant sections, were made to final version of the "Iowa Antidegradation Implementation Procedure" to make it easier to understand, provide consistency and to clarify the original intent of certain aspects of the rule. The major substantive changes made to the Notice and "Iowa Antidegradation Implementation Procedure" prior to presentation to the Commission are as follows:

1. Revised the Tier 2 language in Section 1.2 of the "Iowa Antidegradation Implementation Procedure" to clarify where Tier 2 protection applies.
2. Revised Tier 2 ½ language in Section 1.2 of the "Iowa Antidegradation Implementation Procedure" to reflect the three scenarios where degradation of an Outstanding Iowa Water may occur.
3. Revised the nomination and review criteria for Outstanding Iowa Waters and Outstanding National Resource Waters in Section 1.3 of the "Iowa Antidegradation Implementation Procedure" to provide additional clarity and detail to the department's expectations of the nomination process and criteria needing to be met for a successfully nominate a water as an Outstanding Iowa Water or Outstanding National Resource Water.
4. Deleted the combined sewer overflow language in Section 2.2 of the "Iowa Antidegradation Implementation Procedure" as the situation described did not result in degradation.
5. Deleted the total residual chlorine language in Section 2.2 of the "Iowa Antidegradation Implementation Procedure" as an effective demonstration was not made that this activity would not significantly degrade water quality.
6. Revised the public and intergovernmental participation language in Section 4 of the "Iowa Antidegradation Implementation Procedure" to provide additional detail and clarity to public and intergovernmental participation process.

7. Added Section 6.5 of the "Iowa Antidegradation Implementation Procedure" to address the change in the approach to Clean Water Act regulated open lot confined animal feeding operations.

8. Revised Section 7 of the "Iowa Antidegradation Implementation Procedure" to reflect the appropriate intent for implementation.

9. Revised "Appendix B – Outstanding Iowa Waters" for lakes to remove Upper Gar Lake, Lower Gar Lake, Minnewashta Lake, and East Okoboji Lake as these lakes do not qualify as Outstanding Iowa Waters at this time.

These changes were initiated based upon comments received in regard to the Notice of Intended Action and Amended Notice of Intended Action. The potential for these revisions to be included in the final rule was anticipated by impacted parties as indicated by their comments submitted in regard to these issues.

With the inclusion of the modifications described above, the final rules adopt changes to the Commission's Water Quality Standards (WQS) as summarized below:

- Incorporate by reference the document entitled "Iowa Antidegradation Implementation Procedure," which proposes an approach to be followed in assessing and minimizing degradation of Iowa's surface waters.
- Update antidegradation policy language with four tier approach
- Remove High Quality (Class HQ) and High Quality Resource (Class HQR) designated uses, as they are being replaced by the four tier approach.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

These amendments may have an impact upon small businesses as described in the regulatory analysis published as a part of this rulemaking.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1, and will become effective February 17, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 61.2(2) as follows:

61.2(2) Antidegradation policy. It is the policy of the state of Iowa that:

- ~~— a. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.~~
- ~~— b. Chemical integrity: For those water bodies where water quality significantly exceeds levels necessary to protect existing uses and the waters designated as high quality in 61.3(5) “c,” that water quality will be maintained at or above existing quality, except when it is determined by the environmental protection commission after public hearing and after intergovernmental coordination and public participation provisions noted in the continuing planning process that there is need to allow a lower chemical quality because of necessary and justifiable economic and social development in the area. The state shall ensure adequate chemical quality to fully protect existing uses.~~
- ~~— (1) Bear Creek, mouth in Winneshiek County and tributary to the Upper Iowa River.~~
- ~~— (2) Bloody Run, mouth in Clayton County and tributary to the Mississippi River.~~
- ~~— (3) Catfish Creek from Swiss Valley Park in Dubuque County to its source.~~
- ~~— (4) Unnamed Creek known locally as Coldwater Creek with mouth in Winneshiek County and tributary to the Upper Iowa River.~~
- ~~— (5) Fenchel Creek, mouth to Richmond Springs, in Delaware County and tributary to the Maquoketa River.~~
- ~~— (6) Odell Branch (aka Fountain Spring Creek), mouth (section 10, T90N, R4W, Delaware County), tributary to Elk Creek, which is tributary to the Turkey River to west line of section 9, T90N, R4W, Delaware County.~~
- ~~— (7) Iowa Great Lakes chain of lakes in Dickinson County, including West Lake Okoboji, Spirit Lake, East Lake Okoboji, Minnewashta Lake, Upper Gar Lake, and Lower Gar Lake.~~
- ~~— (8) North Bear Creek, with mouth in Winneshiek County and tributary to Bear Creek, listed as number 1 in this listing.~~
- ~~— (9) North Cedar Creek, with mouth in Clayton County and tributary to Sny Magill Creek.~~
- ~~— (10) Sny Magill Creek, with mouth in Clayton County and tributary to the Mississippi River.~~
- ~~— (11) Turkey River, from the point where it is joined by the Volga River in Clayton County to Vernon Springs in Howard County.~~
- ~~— (12) Waterloo Creek, with mouth in Allamakee County and tributary to the Upper Iowa River.~~

- ~~—(13) Maquoketa River, from confluence with South Fork Maquoketa River (section 16, T90N, R6W, Delaware County) to Highway 3 (north line of section 24, T91N, R7W, Fayette County).~~
- ~~—(14) Spring Branch, mouth (section 10, T88N, R5W, Delaware County) to spring source (section 35, T89N, R5W, Delaware County).~~
- ~~—(15) Little Turkey River, Clayton Delaware County line to south line of section 11, T90N, R3W, Delaware County.~~
- ~~—(16) Middle Fork Little Maquoketa River (aka Bankston Creek), west line of section 31, T90N, R1E to north line of section 33, T90N, R1W, Dubuque County.~~
- ~~—(17) Brush Creek, north line of section 23, T85N, R3E to north line of section 1, T85N, R3E, Jackson County.~~
- ~~—(18) Dalton Lake — Jackson County.~~
- ~~—(19) Little Mill Creek, mouth (Jackson County) to west line of section 29, T86N, R4E, Jackson County.~~
- ~~—(20) Mill Creek (aka Big Mill Creek), from confluence with Little Mill Creek in section 13, T86N, R4E, Jackson County, to confluence with Unnamed Creek, section 1, T86N, R3E, Jackson County.~~
- ~~—(21) Unnamed Creek (tributary to Mill Creek), mouth (section 1, T86N, R3E, Jackson County) to west line of section 1, T86N, R3E, Jackson County.~~
- ~~—(22) Unnamed Creek (aka South Fork Big Mill), tributary to Mill Creek, from mouth (section 8, T86N, R4E, Jackson County) to west line of section 17, T86N, R4E, Jackson County.~~
- ~~—(23) Clear Creek, mouth (Allamakee County) to west line of section 25, T99N, R4W, Allamakee County.~~
- ~~—(24) French Creek, mouth (Allamakee County) to east line of section 23, T99N, R5W, Allamakee County.~~
- ~~—(25) Hickory Creek, mouth (Allamakee County) to south line of section 28, T96N, R5W, Allamakee County.~~
- ~~—(26) Little Paint Creek, mouth to north line of section 30, T97N, R3W, Allamakee County.~~
- ~~—(27) Paint Creek, from confluence with Little Paint Creek to road crossing in section 18, T97N, R4W, Allamakee County.~~
- ~~—(28) Patterson Creek, mouth (Allamakee County) to east line of section 3, T98N, R6W, Allamakee County.~~
- ~~—(29) Silver Creek, mouth (Allamakee County) to south line of section 31, T99N, R5W, Allamakee County.~~
- ~~—(30) Village Creek, mouth (Allamakee County) to west line of section 19, T98N, R4W, Allamakee County.~~
- ~~—(31) Wexford Creek, mouth to west line of section 25, T98N, R3W, Allamakee County.~~

- ~~—(32) Buck Creek, mouth (Clayton County) to west line of section 9, T93N, R3W, Clayton County.~~
- ~~—(33) Ensign Creek (aka Ensign Hollow), mouth (section 28, T92N, R6W, Clayton County) to spring source (section 29, T92N, R6W, Clayton County).~~
- ~~—(34) South Cedar Creek (aka Cedar Creek), mouth (Clayton County) to north line of section 7, T92N, R3W, Clayton County.~~
- ~~—(35) Bear Creek, mouth (Fayette County) to west line of section 6, T92N, R7W, Fayette County.~~
- ~~—(36) Unnamed Creek (aka Glover's Creek), mouth to west line of section 15, T94N, R8W, Fayette County.~~
- ~~—(37) Grannis Creek, mouth to west line of section 36, T93N, R8W, Fayette County.~~
- ~~—(38) Mink Creek, mouth to west line of section 15, T93N, R7W, Fayette County.~~
- ~~—(39) Otter Creek, mouth (Fayette County) to confluence with Unnamed Creek (aka Glover's Creek) in section 22, T94N, R8W, Fayette County.~~
- ~~—(40) Nichols Creek (aka Bigalk Creek), mouth (section 18, T100N, R10W, Winneshiek County) to west line of section 23, T100N, R11W, Howard County.~~
- ~~—(41) Spring Creek, mouth (Mitchell County) to north line of section 8, T97N, R16W, Mitchell County.~~
- ~~—(42) Turtle Creek, mouth (Mitchell County) to east line of section 7, T99N, R17W, Mitchell County.~~
- ~~—(43) Wapsipinicon River, from the town of McIntire to north line of section 20, T99N, R15W, Mitchell County.~~
- ~~—(44) Bohemian Creek, mouth (Winneshiek County) to Howard County Road V58 (west line of section 2, T97N, R11W, Howard County).~~
- ~~—(45) Coon Creek, mouth (Winneshiek County) to road crossing in section 13, T98N, R7W, Winneshiek County.~~
- ~~—(46) Smith Creek (aka Trout River), mouth to south line of section 33, T98N, R7W, Winneshiek County.~~
- ~~—(47) Unnamed Creek (aka Trout Run), mouth to south line of section 27, T98N, R8W, Winneshiek County.~~
- ~~—(48) Twin Springs Creek, mouth to springs in Twin Springs Park in section 20, T98N, R8W, Winneshiek County.~~
- ~~—(49) Canoe Creek (aka West Canoe Creek), from Winneshiek County Road W38 to west line of section 8, T99N, R8W, Winneshiek County.~~
- ~~—e. Standards and restrictions more stringent than those applied to other waters may be applied by the commission to those waters listed below when it is determined that such more stringent standards and restrictions~~

~~are necessary to fully maintain water quality at existing levels.~~

~~West Lake Okoboji in Dickinson County.~~

~~—d. The Mississippi River and the Missouri River do not meet the criteria of 61.2(2)“c” but nevertheless constitute waters of exceptional state and national significance. Water quality management decisions will be made in consideration of the exceptional value of the resource.~~

~~—e. In furtherance of the policy stated in 61.2(2)“b,” there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources, and feasible management and regulatory programs pursuant to Section 208 of the Federal Water Pollution Control Act for nonpoint sources, both existing and proposed.~~

~~—f. Physical and biological integrity: The waters designated as high quality resource waters in 61.3(5)“e” will receive protection of existing uses through maintaining water quality levels necessary to fully protect existing uses or improve water quality to levels necessary to meet the designated use criterion in Tables 1, 2 and 3 and at preserving or enhancing the physical and biological integrity of these waters. This involves the protection of such features of the water body as channel alignment, bed characteristics, water velocity, aquatic habitat, and the type, distribution and abundance of existing aquatic species.~~

~~—g. It is the intent of the antidegradation policy to protect and maintain the existing physical, biological, and chemical integrity of all waters of the state. Consistency with Iowa’s water quality standards requires that any proposed activity modifying the existing physical, biological, or chemical integrity of a water of the state shall not adversely impact these resource attributes, either on an individual or cumulative basis. An adverse impact shall refer to the loss of or irreparable damage to the aquatic, semiaquatic or wildlife habitat or population, or a modification to the water body that would cause an overall degradation to the aquatic or wildlife population and diversity. The fish and wildlife division of the department and the U.S. Fish and Wildlife Service shall serve as consultants to the department for assessing impacts. Exceptions to the preceding will be allowed only if full mitigation is provided by the applicant and approved by the department.~~

~~For those waters of the state designated as high quality or high quality resource waters and the Mississippi and Missouri Rivers, any proposed activity that will adversely impact the existing physical, chemical, or biological integrity of that water will not be consistent with Iowa’s water quality standards. Mitigation will not be allowed except in highly unusual situations where no other project alternatives exist. In these cases, full mitigation must be~~

~~provided by the applicant and approved by the department.~~

a. Tier 1 protection. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.

b. Tier 2 protection. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the department shall ensure water quality adequate to protect existing uses fully. Further, the department shall ensure the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control before allowing any lowering of water quality.

c. Tier 2½ protection—outstanding Iowa waters. Where high quality waters constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

d. Tier 3 protection—outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Any proposed activity that would result in a permanent new or expanded source of pollutants in an outstanding national resource water is prohibited.

e. The four levels of protection provided by the antidegradation policy in paragraphs “a” through “d” of this subrule shall be implemented according to procedures hereby incorporated by reference and known as the “Iowa Antidegradation Implementation Procedure,” effective February 17, 2010. This document may be obtained on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

f. All unapproved facility plans for new or expanded construction permits, except for construction permits issued for nondischarging facilities, shall undergo an antidegradation review if degradation is likely in the receiving water or downstream waters following the effective date of the “Iowa Antidegradation Implementation Procedure.”

~~h- g.~~ This policy shall be applied in conjunction with water quality certification review pursuant to

Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. ~~The repair and maintenance of a drainage district ditch as defined in 567—70.2(455B, 481A) will not be considered a violation of the antidegradation policy for the purpose of implementing Title IV of these rules.~~ United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 as well as Corps regional permits 7, 33, and 34 as promulgated October 29, 2008, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) to (9) No change.

ITEM 2. Rescind subparagraphs **61.3(1)“b”(6)** and **(7)**.

ITEM 3. Renumber subparagraphs **61.3(1)“b”(8)** to **(13)** as **61.3(1)“b”(6)** to **(11)**.

ITEM 4. Amend the Bacteria Criteria Table in subparagraph **61.3(3)“a”(1)** as follows:

Bacteria Criteria Table (organisms/100 ml of water)

Use or Category	Geometric Mean	Sample Maximum
Class A1		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A2 (Only)		
3/15 – 11/15	630	2880
11/16 – 3/14	Does not apply	Does not apply
[Class A2 and (B(CW)) or HQ OIW or ONRW]		
Year-Round	630	2880
Class A3		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A1 – Primary Contact Recreational Use Class A2 – Secondary Contact Recreational Use Class A3 – Children’s Recreational Use		

ITEM 5. Amend subrule 61.3(5) as follows:

61.3(5) *Surface water classification.* The department hereby incorporates by reference “Surface Water Classification,” effective ~~June 11, 2008~~ February 17, 2010. This document may be obtained on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

Date

Richard Leopold, Director